IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/09/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.14734 OF 1997.

M.Sivakumar ... Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep.by its Secretary,
Education Department,
Fort St.George,
Madras-9.

2. The Director of School Education,
College Road,
Madras-6.

3. The District Educational Officer,
Thanjavur,
Thanjavur District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : Mr.N.Paul Vasanthakumar
For respondents: Mr.R.Chandrasekaran,
Govt.Advocate

:O R D E R
The above Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus praying to call for the records relating to the order of the second respondent passed in his proceedings K.Dis.No.47458/W6/95, dated 28.3.1996 and the consequential order of the third respondent passed in Na.Ka.No.1516/95/A1, dated 18.3.1997 and quash the same insofar as the non-granting of conversion of P.G. Assistant English Post to P.G. Assistant History Post w.e.f. 25.10.1993 instead of 23.8.1996 is concerned and direct the respondents to approve the petitioner's appointment as P.G. Assistant History in Sri Kayilai Subramani Desiga Swamigal Higher Secondary School, Tirupanandal w.e.f. 25.10.1993 with salary, increments and all other attendant benefits.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the petitioner was

appointed as Post Graduate Assistant in Sri Kayilai Subrmani Desiga Swamigal Higher Secondary School, Tirupanandal, Thanjavur district on 25.10.1993, which vacancy was caused due to the retirement of one S.Krishnamoorthy, Headmaster on 18.10.1993; that the said S. Krishnamoorthy was taking the History subject to the Higher Secondary Sections in the school and since nobody was there to take the History subject and the petitioner being a M.A.(History), B.Ed. candidate the school Management has appointed the petitioner in the said post and his services were utilised to teach History subject to Higher Secondary Sections.

3. It further comes to be known that since the Headmaster Post fell vacant, one G.Balachandran, P.G. Assistant (English) was promoted as the Headmaster of the School; that one V.Sulochana challenged the said promotion of G.Balachandran before the Joint Director of School Education on ground that she is senior to the said G.Balachandran and she should have been promoted as the Headmistress and since the Joint Director of School Education has allowed the said appeal of Smt.V. Sulochana on 27.5.1994, the Management has filed W.P.No.10648 of 1994 before this Court and in view of the stay granted in W.M.P.No.16063 of 1 994 in the said W.P. on 24.6.1994, Mr.G.Balachandran is continuing as Headmaster.

4. It further comes to be known that on the measures initiated by the Management for the approval of the petitioner's appointment, the third respondent by his proceedings dated 18.1.1995 has stated that his appointment cannot be approved on ground that the present Headmaster Balachandran was a P.G.English Teacher and the Management has not obtained the conversion of the P.G.Assistant Post to P.G.Assistant History Post. After another round of litigation in W.P.No.4690 of 1995 and W.A.No.85 of 1996, the Management submitted an application to the second respondent to order conversion of P.G.English Post to P.G. History Post from 25.10.1993 i.e. the date on which the petitioner was appointed so as to enable the Management to claim salary in favour of the petitioner and the third respondent recommended the said proposal for the conversion of post and the second respondent by his proceedings dated 23.7.1996 has ordered as follows:

"P.G.English Post now kept vacant due to the promotion of G. Balachandran as Headmaster is converted into P.G.History Post. This conversion is subject to the outcome of the W.P.No.10648 of 1994 in the High Court...."

5. The learned counsel for the petitioner would submit that W.P.No.1 0648 of 1994 was allowed by this Court by its order dated 8.6.2001 thereby upholding the promotion of G.Balachandran as Headmaster. The learned counsel for the petitioner would also submit a xerox copy of the said order of this Court.

6. It is further submitted on behalf of the petitioner that pursuant to the said order of the second respondent, the third respondent by his proceedings Na.Ka.No.1516/A1/95, dated 18.3.1997 has approved the appointment of the petitioner as P.G. Assistant History from 28.3.1 996 and paid salary to the petitioner from 28.3.1996 onwards and as such the petitioner is denied salary from 25.10.1993 to 27.3.1996. Therefore, the petitioner has come forward to file the present writ petition.

7. A careful perusal of the impugned orders would show that no reasons have been assigned by the respondents to order salary for the petitioner only from 28.3.1996 when the Management has very clearly stated that he joined duty as P.G. Assistant History on 25.10.1993 itself and is serving in the said capacity till date. But, neither the second respondent in his order dated 28.3.1996 nor the third respondent in his order dated 18.3.1997 have considered this aspect so as to grant the approval as it has been sought for on the part of the Management nor any reason has been assigned for denying the salary to the petitioner from 25.10.1993 to 27.3.1996 and granting the same only from 28.3.1996 in spite of the specific case of the school authorities that on the retirement of the erstwhile Headmaster Mr.S.Krishnamoorthy, who was also taking History classes for the Higher Secondary Sections, there was virtually no teacher to take the History Classes in the school and hence the petitioner who was a M.A.(History), B.Ed. candidate was appointed to catre to the needs of the school. Therefore, both the orders passed by the respondents 2 and 3, since being inconsistent ones, this Court has to cause its interference into the same and quash the same and grant the relief as sought for on the part of the petitioner and hence the following order:

In result,
(i) the above Writ Petition succeeds and the same is allowed.
(ii) The order of the second respondent dated 28.3.1996 made in his K.Dis.No.47458/W6/95 and the consequential order of the third respondent passed in his Na.Ka.No.1516/95/A1, dated 18.3.1997 are quashed.
(iii) The respondents 2 and 3 are hereby directed to issue necessary orders granting approval of the petitioner's appointment as P.G. Assistant (History) in Sri Kayilai Subramani Desiga Swamigal Higher Secondary School,

Tirupanandal, Thanjavur District w.e.f. 25.10.1993 i.e. from the date of his appointment in the school, within sixty days from the date of receipt of a copy of this order.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes
Rao

To

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Education Department,
Fort St.George,
Madras-9.

2. The Director of School Education,
College Road,
Madras-6.

3. The District Educational Officer,
Thanjavur,
Thanjavur District.

4. The Secretary,
Sri Kayilai Subramania Desika
Swamigal Higher Secondary School,
Thirupanandal,
Thanjavur District.